

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States

v.

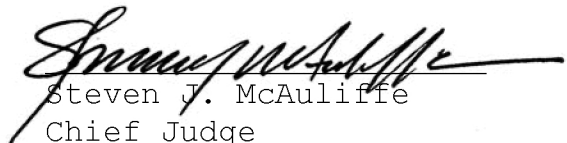
Case No. 08-cr-161-02-SM

Alnardo Suarez

Re: Document No. 51, Motion for Modification of Imposed Term of Imprisonment Under 18 U.S.C. § 3582(c)(2)

Ruling: Denied. The motion is not treated as one filed pursuant to 28 U.S.C. Section 2255. Neither the Fair Sentencing Act of 2010, nor the Temporary Emergency Amendment to the Sentencing Guidelines and Commentary, 75 Fed. Reg. 66, 188 (Oct. 27, 2010), effective November 1, 2010, are retroactively applicable to prisoners sentenced before the Act and Guidelines amendment became effective. See United States v. Douglas, ___ F.Supp. 2d ___, 2010 WL 4260221, at * 3 (D. Me. 2010) ("Another subject of debate was whether the new penalties should apply retroactively to those already sentenced and in prison, as the Commission's 2007 amendments had done. The decision was no." (citing United States v. Bell, No. 09-3908, 2010 WL 4103700, at * 10 (7th Cir. Oct. 20, 2010) (Fair Sentencing Act is not retroactive); United States v. Brown, No. 10-1791, 2010 WL 3958760, at *1 (8th Cir. 2010) (same); United States v. Carradine, No. 08-3220, 2010 WL 3619799, at *5 (6th Cir. Sept. 20, 2010) (Fair Sentencing Act "contains no express statement that it is retroactive nor can we infer any such express intent from its plain language"). Defendant was sentenced, and his sentence was affirmed on appeal, well before the Act and implementing temporary Guidelines amendment became effective.

Date: November 4, 2010


Steven J. McAuliffe
Chief Judge

cc: Alnardo Suarez, pro se
U.S. Attorney's Office